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16 Attorney for Defendant
17 VITAMEDICA CORPORATION

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF ALAMEDA**

20 **ENVIRONMENTAL RESEARCH**
21 **CENTER, INC., a California non-profit**
22 **corporation**

23 **Plaintiff,**

24 **vs.**

25 **VITAMEDICA CORPORATION and**
26 **DOES 1-100**

27 **Defendants.**

28 **CASE NO. RG18930005**

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 28, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On November 28, 2018, Plaintiff Environmental Research Center, Inc. ("Plaintiff" or "ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against VitaMedica Corporation ("VitaMedica" or

1 “Defendant”) and Does 1-100. In this action, ERC alleges that a number of products
2 manufactured, distributed, or sold by VitaMedica contain lead, a chemical listed under
3 Proposition 65, and expose consumers to this chemical at a level requiring a Proposition 65
4 warning. These products (referred to hereinafter individually as a “Covered Product” or
5 collectively as “Covered Products”) are: (1) LeanBiotics by VitaMedica LeanMeal RS Meal
6 Replacement Drink Mix Dutch Chocolate; (2) VitaMedica The Science of Natural Health
7 Multi-Vitamin & Mineral Program (which includes the following products: (a) VitaMedica The
8 Science of Natural Health Multi-Vitamin & Mineral Program Wellness Energy Support With
9 B-Complex and (b) VitaMedica The Science of Natural Health Multi-Vitamin & Mineral
10 Program Wellness Bone Support Cal-Mag-D Complex); (3) VitaMedica Bromelain with
11 Quercetin B Recovery; (4) VitaMedica The Science of Natural Health Recovery Support
12 Program Recovery Clinical Support (which includes the following products: (a) VitaMedica
13 The Science of Natural Health Recovery Support Program Recovery Clinical Support Morning
14 Formula; (b) VitaMedica The Science of Natural Health Recovery Support Program Recovery
15 Clinical Support Evening Formula; and (c) VitaMedica The Science of Natural Health
16 Recovery Support Program Recovery Bromelain With Quercetin); (5) VitaMedica Healthy
17 Skin Formula Wellness; and (6) VitaMedica Bone Support Cal-Mag-D Complex Wellness.

18 1.2 ERC and VitaMedica are sometimes hereinafter referred to individually as a
19 “Party” or collectively as the “Parties.”

20 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
21 causes, helping safeguard the public from health hazards by reducing the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
23 and encouraging corporate responsibility.

24 1.4 VitaMedica manufactures, distributes, and/or sells Covered Products. Plaintiff
25 alleges that VitaMedica is a business entity that has employed ten or more persons at times
26 relevant to this action, and qualifies as a “person in the course of doing business” within the
27 meaning of Proposition 65. For the limited purpose of this Consent Judgment only, and in the
28 interest of resolving this action only, VitaMedica does not dispute this allegation.

1 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
2 dated July 20, 2018 that was served on the California Attorney General, other public enforcers,
3 and VitaMedica ("Notice"). A true and correct copy of the Notice is attached hereto as **Exhibit**
4 **A** and incorporated herein by reference. More than 60 days have passed since the Notice was
5 served on the Attorney General, public enforcers, and VitaMedica, and to the best of the
6 Parties' knowledge no designated governmental entity has filed a Complaint or is diligently
7 prosecuting an action against VitaMedica with regard to the Covered Products or the alleged
8 violations.

9 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
10 persons in California to lead without first providing clear and reasonable warnings in violation
11 of California Health and Safety Code section 25249.6. VitaMedica denies all material
12 allegations in the Notice and Complaint. Defendant expressly denies any violation of
13 Proposition 65 and asserts that all detectible levels of lead (if any) in the Covered Products are
14 the result of naturally occurring lead as set forth in California Code of Regulations, Title 27,
15 Section 25501(a). Defendant also expressly asserts that the Covered Products are completely
16 safe for their intended use, comply with all other applicable health and safety laws, are
17 manufactured using good manufacturing practices, and that Defendant does not intentionally
18 add lead or any other harmful chemical to the Covered Products.

19 1.7 This Consent Judgment resolves claims that are denied and disputed by
20 Defendant. The Parties have entered into this Consent Judgment pursuant to a full and final
21 settlement of any and all claims between the Parties to avoid prolonged and costly litigation.
22 Defendant denies the material factual and legal allegations contained in the Notice and
23 Complaint and maintains that all products it has manufactured, distributed and/or sold in
24 California (including but not limited to the Covered Products) have been and are in compliance
25 with all applicable laws including Proposition 65. Nothing in this Consent Judgment shall
26 constitute or be construed as an admission by Defendant of any fact, conclusion of law, issue of
27 law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission
28 concerning any alleged violation of Proposition 65, nor shall this Consent Judgment be offered

1 or admitted as evidence against Defendant in any administrative or judicial proceeding or
2 litigation in any court, agency, or forum, except with respect to an action seeking to enforce the
3 terms of this Consent Judgment. This Section 1.7 shall not diminish or otherwise affect the
4 obligations, responsibilities, and duties of any Party to this Consent Judgment.

5 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
6 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
7 current or future legal proceeding unrelated to these proceedings.

8 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
9 a Judgment by this Court.

10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment only and any further court action that may become
12 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
13 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
14 over VitaMedica as to the acts alleged in the Complaint, that venue is proper in Alameda County,
15 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
16 all claims up through and including the Effective Date which were or could have been asserted in
17 this action based on the facts alleged in the Notice and Complaint.

18 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

19 **3.1** Beginning on the Effective Date, VitaMedica shall be permanently enjoined
20 from manufacturing for sale in the State of California, "Distributing into the State of
21 California," or directly selling in the State of California, any Covered Products which expose a
22 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless
23 the Covered Product meets the warning requirements under Section 3.2. Defendant shall not be
24 required to provide any of the Warnings specified in Section 3.2 for any Covered Product that
25 qualifies as a Reformulated Covered Product pursuant to Section 3.3.

26 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
27 of California" shall mean to directly ship a Covered Product into California for sale in
28

1 California, or to sell a Covered Product to a distributor that VitaMedica knows or has reason to
2 know will sell the Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment only, and any further court action
4 that may become necessary to enforce this Consent Judgment, the "Daily Lead Exposure
5 Level" shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of lead per gram of product, multiplied by grams of product per serving of the
7 product (using the largest serving size appearing on the product label), multiplied by servings
8 of the product per day (using the largest number of recommended daily servings appearing on
9 the label), which equals micrograms of lead exposure per day. If the label contains no
10 recommended daily servings, then the number of recommended daily servings shall be one.

11 **3.2 Clear and Reasonable Warnings**

12 If VitaMedica is required to provide a warning pursuant to Section 3.1, one of the
13 following warnings shall be utilized ("Warning"):

14 **OPTION 1**

15 [California Proposition 65] **WARNING:** Consuming this product can expose you to
16 chemicals including lead which is [are] known to the State of California to cause [cancer
17 and] birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov/food.

18 or

19 **OPTION 2**

20  [California Proposition 65] **WARNING:** Cancer and Reproductive Harm -
21 www.P65Warnings.ca.gov/food.

22 Language in brackets is optional. VitaMedica shall use the phrase "cancer and" in the Warning if
23 VitaMedica has reason to believe that the "Daily Lead Exposure Level" is greater than 15
24 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
25 3.4, or if VitaMedica has reason to believe that another Proposition 65 chemical is present which
26 may require a cancer warning.

27 For sales of Covered Products in retail stores, the Warning shall be securely affixed to or
28 printed upon the package, container, or label of each Covered Product distributed or sold in

1 California or to California consumers. If the Warning is provided on the label, it must be set off
2 from other surrounding information and enclosed in a box.

3 For any Covered Product sold over the internet to a California delivery address, the
4 Warning for such Covered Product must be prominently displayed either: (a) on the product
5 display page for the Covered Product; (b) on the same web page as the order form for the
6 Covered Product; (c) on the same page on which the sales price for the Covered Product is
7 displayed; or (d) on one or more web pages displayed to the purchaser during the checkout
8 process. The Warning may also be provided by a clearly marked hyperlink labeled "[California
9 Proposition 65] **WARNING**" (in all capital letters and bold print) on the product display page
10 prior to purchase of the Covered Product (language in brackets is optional). No Warning is
11 considered prominently displayed if the purchaser must search for it in the general content of the
12 website. If the warning is displayed anywhere other than on the product display page where more
13 than one product is displayed, an asterisk or other identifying method must be utilized to identify
14 which products on the checkout page or other web page are subject to the Warning.

15 The Warning shall be at least the same size as the largest of any other health or safety
16 warnings also appearing on the product display page (for internet sales) or on the label or container
17 of VitaMedica's product packaging, and the word "**WARNING**" shall be in all capital letters and
18 in bold print. No statements intended to or likely to have the effect of diminishing the impact of,
19 or reducing the clarity of, the Warning shall accompany the Warning. Further, no statements may
20 accompany the Warning that state or imply that the source of the listed chemical mitigates the risk
21 of exposure or the harmful effect of the listed chemical.

22 VitaMedica must display the above Warning with such conspicuousness, as compared with
23 other words, statements or designs on the packaging, label or container, or on its website, if
24 applicable, to render the Warning likely to be read and understood by an ordinary individual under
25 customary conditions of purchase or use of the product. No testing of any Covered Product is
26 required under Sections 3.3-3.5 of this Consent Judgment if the Covered Product is sold in
27 California, continuously and without interruption from the Effective Date and beyond, with a
28 Warning.

1
2 **3.3 Reformulated Covered Products**

3 A "Reformulated Covered Product" is a Covered Product for which the "Daily Lead
4 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality
5 control methodology described in Section 3.4, and taking account of any lead allowances for the
6 ingredients in the Covered Product pursuant to Section 3.5.

7 **3.4 Testing and Quality Control Methodology**

8 **3.4.1** For Reformulated Covered Product, beginning within one year of the
9 Effective Date, VitaMedica shall arrange for lead testing of three randomly selected samples of
10 the Covered Product at least once a year for a minimum of two consecutive years, in the form
11 intended for sale to the end-user, which VitaMedica intends to sell or is manufacturing for sale
12 in California, or is directly selling to a consumer in California or "Distributing into the State of
13 California." If the three tests conducted pursuant to this Section demonstrate that no Warning
14 is required for a Covered Product during each of the two consecutive years, then the testing
15 requirements of this Section will no longer be required as to that Covered Product and
16 VitaMedica may return to its normal testing protocol of having at least one sample from each
17 production lot of the Covered Product tested for purposes of determining whether the Covered
18 Product requires a Warning if sold in California. Once VitaMedica has returned to its normal
19 testing protocol, it shall nonetheless be allowed to test up to five samples from any production
20 lot, and average such samples for purposes of determining whether a Warning is required.
21 However, if, during or after the two year testing period, VitaMedica reformulates any of the
22 Covered Products, VitaMedica shall test that Covered Product annually for a least another two
23 consecutive years after such change is made, after which VitaMedica may return to its normal
24 testing protocol.

25 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the
26 arithmetic mean of the lead detection results of the three (3) randomly selected samples of the
27 Covered Product will be controlling.
28

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
7 independent third party laboratory certified by the California Environmental Laboratory
8 Accreditation Program or an independent third-party laboratory that is registered with the
9 United States Food & Drug Administration.

10 **3.4.5** Nothing in this Consent Judgment shall limit VitaMedica's ability to
11 conduct, or require that others conduct, additional testing of the Covered Products, including
12 the raw materials used in their manufacture. Nothing in this Consent Judgment shall require
13 VitaMedica to produce any such additional testing, not otherwise required by this Consent
14 Judgment, to ERC.

15 **3.4.6** Within thirty (30) days of ERC's written request, VitaMedica shall
16 deliver lab test reports obtained pursuant to Section 3.4 to ERC. VitaMedica shall retain all test
17 results and documentation under this Consent Judgment for a period of two years from the date
18 of each test, or such longer period as may be required by law or good manufacturing practices.
19 Any test results provided hereunder shall be maintained in strict confidence by ERC pursuant to
20 the terms of the Confidentiality Agreement entered into between the Parties.

21 **3.5 Lead Allowances**

22 In calculating the Daily Lead Exposure Level for a Covered Product, VitaMedica shall be
23 allowed to deduct the amount of lead which is deemed "naturally occurring" in any ingredient
24 listed in **Table 1** that is contained in that Covered Product under the following conditions: For
25 each year that VitaMedica claims entitlement to a "naturally occurring" allowance, VitaMedica
26 shall maintain for a period of at least two years: (a) a list of each ingredient in the Covered
27 Product for which a "naturally occurring" allowance is claimed; and (b) documentation of
28 laboratory testing conducted during the year for which the "naturally occurring" allowance is

1 claimed, that complies with Sections 3.4.3 and 3.4.4, and that shows the amount of lead, if any,
2 contained in any ingredient listed in **Table 1** that is contained in the Covered Product and for
3 which VitaMedica intends to deduct "naturally occurring" lead. If the laboratory testing reveals
4 the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product,
5 VitaMedica shall be entitled to deduct up to the full amount of the allowance for that ingredient,
6 as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that
7 ingredient in the Covered Product. If the Covered Product does not contain an ingredient listed
8 in **Table 1**, VitaMedica shall not be entitled to a deduction for "naturally occurring" lead in the
9 Covered Product for that ingredient.

10 The information that VitaMedica is required to maintain by Sections 3.5 (a) and
11 (b) shall be provided to ERC within 30 days of ERC's written request for any year that
12 VitaMedica shall claim entitlement to the "naturally occurring" allowance. ERC shall maintain
13 the confidentiality of the information provided by VitaMedica pursuant to Sections 3.5 (a) and
14 (b) in accordance with the terms of the Confidentiality Agreement entered into between the
15 Parties.

16 **TABLE 1**

17 INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
18 Calcium (Elemental)	Up to 0.8 micrograms/gram
19 Ferrous Fumarate	Up to 0.4 micrograms/gram
20 Zinc Oxide	Up to 8.0 micrograms/gram
21 Magnesium Oxide	Up to 0.4 micrograms/gram
22 Magnesium Carbonate	Up to 0.332 micrograms/gram
23 Magnesium Hydroxide	Up to 0.4 micrograms/gram
24 Zinc Gluconate	Up to 0.8 micrograms/gram
25 Potassium Chloride	Up to 1.1 micrograms/gram
26 Cocoa Powder	Up to 1.0 micrograms/gram
27 Chocolate Liquor	Up to 1.0 micrograms/gram

Cocoa Butter

Up to 0.1 micrograms/gram

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential claims for civil penalties, additional settlement payments, attorney's fees, expenses, investigative costs, and any other claim for monetary relief of any kind, VitaMedica shall make a total settlement payment of \$35,000 ("Total Settlement Amount") to ERC. VitaMedica must either make the Total Settlement Payment within 10 days of the Effective Date ("Due Date"), or it may make the Total Settlement Payment in two equal installments of \$17,500 each, the first installment to be paid within 10 days of the Effective Date and the second installment no later than 40 days after the Effective Date. VitaMedica shall make the Total Settlement Payment by wire transfer to ERC's account, for which ERC will timely provide VitaMedica with the necessary account information. The Total Settlement Amount shall be apportioned as follows, and ERC shall have sole responsibility for disbursing the Total Settlement Amount as follows:

4.2 \$1,000.00 shall be paid in complete resolution of any claim for civil penalties pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$750.00) of the civil penalty payment to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$250.00) of the civil penalty.

\$2,517.67 shall be paid as complete reimbursement to ERC for all of its reasonable costs and expenses incurred in bringing this action.

4.3 \$11,434.20 shall be paid to Michael Freund as complete reimbursement of any and all attorney's fees and expense he has incurred as ERC's attorney in this matter; \$1,506.20 shall be paid to Ryan Hoffman as complete reimbursement of any and all attorney's fees and expense he has incurred as ERC's attorney in this matter; and \$18,541.93 shall be paid to ERC as complete reimbursement for any and all of its in-house legal fees in this matter. The attorney's fee payments in this paragraph are in complete resolution of any claim ERC or its

1 counsel have for their attorney's fees and expenses, inclusive of investigative, testing, or any
2 other form of expense, through the Court's entry of this Consent Judgment. Except
3 as specifically provided herein, each Party shall bear its own fees and costs.

4 **4.4** In the event that VitaMedica fails to remit the Total Settlement Amount owed
5 under Section 4 of this Consent Judgment on or before the Due Date, VitaMedica shall be
6 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
7 provide written notice of the delinquency to VitaMedica via electronic mail. If VitaMedica
8 fails to deliver the Total Settlement Amount within five (5) days from the written notice, the
9 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in
10 the California Code of Civil Procedure section 685.010. Additionally, VitaMedica agrees to
11 pay ERC's reasonable attorney's fees and costs for any successful motion brought to collect
12 any portion of the Total Settlement Payment due under this Consent Judgment.

13 **5. MODIFICATION OF CONSENT JUDGMENT**

14 **5.1** This Consent Judgment may be modified as to injunctive terms, only, by: (i)
15 written stipulation of the Parties and upon entry by the Court of a modified consent judgment;
16 or (ii) motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
17 modified consent judgment.

18 **5.2** If VitaMedica seeks to modify this Consent Judgment under Section 5.1, then
19 VitaMedica must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
20 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
21 provide written notice to VitaMedica within twenty (20) days of receiving the Notice of Intent.
22 If ERC notifies VitaMedica in a timely manner of ERC's intent to meet and confer, then the
23 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
24 person or via telephone within twenty (20) days of ERC's notification of its intent to meet and
25 confer. Within twenty (20) days of such meeting, if ERC disputes the proposed modification,
26 ERC shall provide to VitaMedica a written basis for its position. The Parties shall continue to
27 meet and confer for an additional twenty (20) days in an effort to resolve any remaining
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1 disputes. Should it become necessary, the Parties may agree in writing to different deadlines
2 for the meet-and-confer period.

3 **5.3** In the event that VitaMedica initiates or otherwise requests a modification under
4 Section 5.1, and the meet and confer process leads to a joint motion or application for a
5 modification of the Consent Judgment, VitaMedica shall reimburse ERC its reasonable
6 attorney's fees and costs for the time spent in the meet-and-confer process and filing and
7 arguing the motion or application. ERC shall provide VitaMedica with documentation
8 sufficient to support any such claimed attorney's fees and costs.

9 **5.4** Where the meet-and-confer process does not lead to a joint motion or
10 application in support of a modification of the Consent Judgment, then either Party may seek
11 judicial relief on its own.

12 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
13 **JUDGMENT**

14 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
15 this Consent Judgment.

16 **6.2** If, after the Effective Date, ERC alleges that any Covered Product fails to
17 qualify as a Reformulated Covered Product and was sold or distributed without a warning in
18 California, then ERC shall inform VitaMedica in a reasonably prompt manner. When
19 informing VitaMedica of the alleged violation, ERC shall provide VitaMedica with copies of
20 all of its relevant test reports and other supporting information, including purchase receipts and
21 product photographs sufficient to identify the product(s) and the lot number(s) of the product(s)
22 in question. VitaMedica shall, within thirty (30) days following such notice, provide ERC with
23 testing information, from an independent third-party laboratory meeting the requirements of
24 Sections 3.4.3 and 3.4.4, demonstrating VitaMedica's compliance with the Consent Judgment,
25 and/or any other information refuting the alleged violation. VitaMedica shall be entitled to
26 average three test results to show that the Covered Product qualifies as a Reformulated Product
27 hereunder. The Parties shall first attempt to resolve the matter prior to ERC taking any further
28 legal action. This Consent Judgment may only be enforced by the Parties hereto, and

1 enforcement of this Consent Judgment is the only remedy for alleged violations hereof. Any
2 test results provided hereunder shall be maintained in strict confidence by the Parties and
3 subject to the Confidentiality Agreement entered into between the Parties.

4 **7. APPLICATION OF CONSENT JUDGMENT**

5 This Consent Judgment applies to, is binding upon, and is solely for the benefit of the
6 Parties and their respective officers, directors, shareholders, employees, agents, parent companies,
7 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors,
8 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
9 application to any units of the Covered Product which are distributed or sold exclusively outside
10 the State of California and which are not sold to California consumers.

11 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

12 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
13 on behalf of itself and in the public interest, and VitaMedica and its respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
15 manufacturers, suppliers, franchisees, licensees, customers (not including private label
16 customers of VitaMedica), distributors, wholesalers, retailers, and all other upstream and
17 downstream entities in the distribution chain of any Covered Product, and the predecessors,
18 successors, and assigns of any of them (collectively, "Released Parties") of any claim raised or
19 that could have been raised in the Notice and Complaint. ERC, on behalf of itself and in the
20 public interest, hereby fully releases and discharges the Released Parties from any and all
21 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
22 expenses asserted, or that could have been asserted from the handling, use, or consumption of
23 the Covered Products, and as to any alleged violation of Proposition 65 or its implementing
24 regulations arising from the failure to provide Proposition 65 warnings on the Covered
25 Products regarding lead contained in Covered Products manufactured, distributed, and/or sold
26 up to and including the Effective Date.

27 **8.2** ERC on its own behalf only, and VitaMedica on its own behalf only, further
28 waive and release any and all claims they may have against each other for all actions or

1 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
2 65 in connection with the Notice and Complaint up through and including the Effective Date,
3 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
4 enforce the terms of this Consent Judgment.

5 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
6 alleged in the Notice and Complaint, or relating to the Covered Products, will develop or be
7 discovered. ERC on behalf of itself only, and VitaMedica on behalf of itself only,
8 acknowledge that this Consent Judgment is expressly intended to cover and include all such
9 claims up through and including the Effective Date, including all rights of action therefore.
10 ERC and VitaMedica acknowledge that the claims released herein and in Sections 8.1 and 8.2
11 above may include unknown claims, and nevertheless waive California Civil Code section
12 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
16 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
 OR HER SETTLEMENT WITH THE DEBTOR.

17 ERC on behalf of itself only, and VitaMedica on behalf of itself only, acknowledge and
18 understand the significance and consequences of this specific waiver of California Civil Code
19 section 1542, and on behalf of themselves and their past and current representatives and
20 attorneys, expressly waive and relinquish any and all rights and benefits that they may have
21 under, or which may be conferred on them by the provisions of Section 1542 of the California
22 Civil Code, as well as under any other state or federal statute or common law principle of
23 similar effect, to the fullest extent that they may lawfully waive such rights or benefits
24 pertaining to the released matters. In furtherance of such intention,, the release hereby given
25 shall be and remain in effect as a full and complete release notwithstanding the discovery or
26 existence of any such additional or different claims or facts arising out of the released matters.
27
28

1 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 in the Covered Products as set forth in the Notice and Complaint.

4 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of VitaMedica's
6 products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

8 In the event that any of the provisions of this Consent Judgment are held by a court to be
9 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10 **10. GOVERNING LAW**

11 The terms and conditions of this Consent Judgment shall be governed by and construed in
12 accordance with the laws of the State of California.

13 **11. PROVISION OF NOTICE**

14 All notices required to be given to either Party to this Consent Judgment by the other shall
15 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
16 email may also be sent.

17 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Ph: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:

24 Michael Freund
25 Ryan Hoffman
26 Michael Freund & Associates
27 1919 Addison Street, Suite 105
28 Berkeley, CA 94704
Ph: (510) 540-1992
Fax: (510) 540-5543

FOR VITAMEDICA CORPORATION:

1 Yvette La-Garde
2 Chief Operating Officer
3 VitaMedica Corporation
4 946 10th Street
5 Manhattan Beach, CA 90266

6 With a copy to:

7 Robert Maxwell
8 Rogers Joseph O'Donnell
9 311 California Street, 10th FL
10 San Francisco, CA 94104
11 Telephone: (415) 956-2828
12 Email: jmaxwell@rjo.com

13 12. COURT APPROVAL

14 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall prepare and
15 file a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
16 Consent Judgment.

17 12.2 If the California Attorney General objects to any term in this Consent Judgment,
18 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
19 prior to the hearing on the motion.

20 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
21 void and have no force or effect.

22 13. EXECUTION AND COUNTERPARTS

23 This Consent Judgment may be executed in counterparts, which taken together shall be
24 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
25 as the original signature.

26 14. DRAFTING

27 The terms of this Consent Judgment have been reviewed by the respective counsel for each
28 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
4 equally in the preparation and drafting of this Consent Judgment.

5 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

6 If a dispute arises with respect to either Party's compliance with the terms of this Consent
7 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
8 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
9 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

10 **16. ENFORCEMENT**

11 ERC may, by motion or order to show cause before the Superior Court of Alameda
12 County, enforce the terms and conditions contained in this Consent Judgment. In any action
13 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
14 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

16 **17.1** This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments, and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

26 This Consent Judgment has come before the Court upon the request of the Parties. The
27 Parties request that the Court fully review this Consent Judgment and, being fully informed
28 regarding the matters which are the subject of this action:

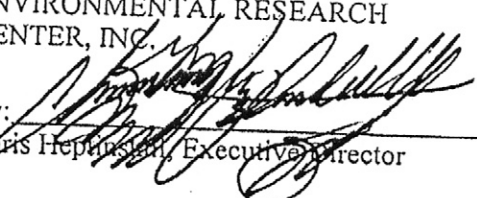
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
2 equitable settlement of all matters raised by the allegations in the Notice and Complaint, that the
3 matter has been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings required pursuant to California Health and Safety Code section
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7 Dated: 11/27, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

11 Dated: _____, 2018

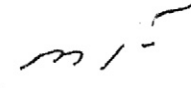
VITAMEDICA CORPORATION

By: _____
Its: _____

15 **APPROVED AS TO FORM:**

16 Dated: 11/27, 2018

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

22 Dated: 11/30, 2018

ROGERS JOSEPH O'DONNELL

By: _____
James Robert Maxwell
Attorney for Defendant VitaMedica
Corporation

27 ///

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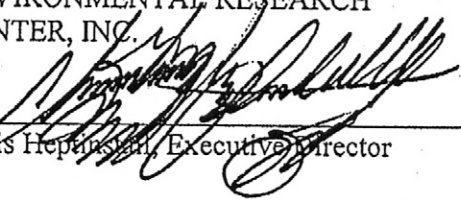
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations in the Notice and Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings required pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

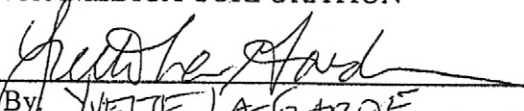
Dated: 11/27, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

Dated: 11/30, 2018

VITAMEDICA CORPORATION

By: 
Its: YVETTE LA-GARDE
Chief Operating Officer

APPROVED AS TO FORM:

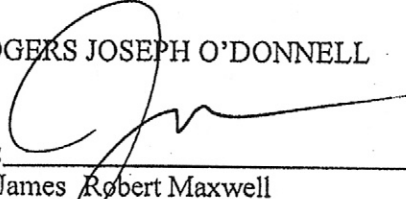
Dated: _____, 2018

MICHAEL FREUND & ASSOCIATES

By: _____
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

Dated: 11/30, 2018

ROGERS JOSEPH O'DONNELL

By: 
James Robert Maxwell
Attorney for Defendant VitaMedica
Corporation

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

July 20, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.*
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

VitaMedica Corporation

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1) LeanBiotics by VitaMedica LeanMeal RS Meal Replacement Drink Mix Dutch Chocolate - Lead
- 2) VitaMedica The Science of Natural Health Multi-Vitamin & Mineral Program - Lead
 - a. VitaMedica The Science of Natural Health Multi-Vitamin & Mineral Program Wellness Energy Support With B-Complex
 - b. VitaMedica The Science of Natural Health Multi-Vitamin & Mineral Program Wellness Bone Support Cal-Mag-D Complex
- 3) VitaMedica Bromelain with Quercetin B Recovery - Lead
- 4) VitaMedica The Science of Natural Health Recovery Support Program Recovery Clinical Support - Lead
 - a. VitaMedica The Science of Natural Health Recovery Support Program Recovery Clinical Support Morning Formula
 - b. VitaMedica The Science of Natural Health Recovery Support Program Recovery Clinical Support Evening Formula
 - c. VitaMedica The Science of Natural Health Recovery Support Program

Recovery Bromelain With Quercetin

5) VitaMedica Healthy Skin Formula Wellness - Lead

6) VitaMedica Bone Support Cal-Mag-D Complex Wellness - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

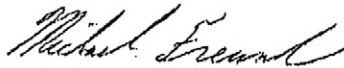
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 20, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to VitaMedica Corporation and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by VitaMedica Corporation

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 20, 2018



Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On July 20, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
VitaMedica Corporation
946 10th Street
Manhattan Beach, CA 90266

David H. Rahm
(Registered Agent for VitaMedica Corporation)
946 10th Street
Manhattan Beach, CA 90266

Current President or CEO
VitaMedica Corporation
1140 Highland Avenue, Suite 196
Manhattan Beach, CA 90266

Registered Agent
c/o VitaMedica Corporation
375 Enrede Lane
St. Augustine, FL 32095

Current President or CEO
VitaMedica Corporation
22121 S Vermont Avenue
Torrance, CA 90502

On July 20, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On July 20, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

July 20, 2018

Page 5

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Kathryn L. Turner, Chief Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

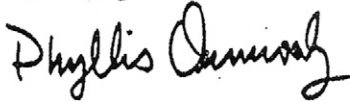
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 20, 2018
Page 6

On July 20, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 20, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

July 20, 2018

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonoma, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2nd Floor Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2nd Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at
P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.